

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 2517 - SB 2734

March 10, 2020

**SUMMARY OF ORIGINAL BILL:** Redefines drug-free zones. Changes the punishment for violations of Tenn. Code Ann. § 39-17-417 where the recipient or intended recipient of the controlled substance is under the age of 18.

FISCAL IMPACT OF ORIGINAL BILL:

Decrease State Expenditures – \$18,449,100 Incarceration\*

**SUMMARY OF AMENDMENT (016430):** Deletes and replaces all language after the enacting clause such that the substantive changes are to: (1) remove changes to the punishment for violations of Tenn. Code Ann. § 39-17-417 where the recipient or intended recipient of the controlled substance is under the age of 18; (2) remove the court's ability to waive sentencing enhancements for violations meeting outlined circumstances; (3) authorize and revise, rather than remove, minimum sentence requirements; (4) create a rebuttable presumption against serving at least the minimum sentence for the defendant's appropriate range of sentence unless the court finds that the defendant's conduct exposed vulnerable persons to the distractions and dangers that are incident to the occurrence of illegal drug activity; and (5) authorize the state to elect to seek an enhancement of a defendant's sentence for both a drug offense occurring within a drug-free zone and a sale or delivery of a controlled substance in which the recipient or an intended recipient of is under 18 as a result of a single act.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Decrease State Expenditures – Net Impact - \$18,373,400 Incarceration\*

Assumptions for the bill as amended:

*Drug-Free School Zone*

- Tenn. Code Ann. § 39-17-432 enhances drug offenses under Tenn. Code Ann. § 39-17-417 by one classification if committed within 1,000 feet of a school, child care agency, public library, recreational center, or park, also known as a "drug-free zone", and offenses committed within 1,000 feet of a public or private elementary, middle, or secondary school, also known as a "school safety zone". Offenses occurring in a school

safety zone are eligible for additional incarceration time resulting from such enhancement.

- The proposed legislation redefines drug-free zones as:
  - The grounds or facilities of any school; or
  - Within 500 feet of or within the area bounded by a divided state or federal highway, whichever is less, the real property that comprises a public or private elementary, middle, or secondary school, preschool, child care agency, public library, recreational center, or park.
- The proposed legislation authorizes, rather than requires, the fees outlined in Tenn. Code Ann. § 39-17-432(b)(2) for offenses committed in drug-free zones and sentence enhancements.
- Based on information provided by the Department of Correction (DOC), the following are the average number admissions resulting from offenses occurring in drug-free school safety zones each year over the last five years:
  - Class A felony – 63.7
  - Class B felony – 252.6
  - Class C felony – 573.9
  - Class D felony – 270.7
  - Class E felony – 255.0
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.81 percent per year for each of the past 10 years (from 2008 to 2018), yielding a projected compound population growth rate of 8.37 percent. Assuming Tennessee's population continues growing by the same rates over the next 10-year period, population growth will account for 5 (63.7 x 8.37%) additional Class A felony admission, 21 (252.6 x 8.37%) additional Class B felony admissions, 48 (573.9 x 8.37%) additional Class C felony admissions, 23 (270.7 x 8.37%) additional Class D felony admissions, and 21 (255.0 x 8.37%) additional Class E felony admissions.
- Recidivism will not impact these admissions.
- This analysis estimates that 25 percent of all offenses are committed beyond 500 feet from a school safety zone statewide; therefore, the proposed legislation will result in the following admissions being prosecuted one classification lower than they would be under current law:
  - Class A felony – 17 [(63.7 + 5) x 25%]
  - Class B felony – 68 [(252.6 + 21) x 25%]
  - Class C felony – 155 [(573.9 + 48) x 25%]
  - Class D felony – 73 [(270.7 + 23) x 25%]
- The proposed legislation will result in:
  - 17 Class A felonies being punished as Class B felonies
  - 68 Class B felonies being punished as Class C felonies
  - 155 Class C felonies being punished as Class D felonies
  - 73 Class D felonies punished as Class E felonies
- The average time served by felony class is:
  - Class A felony – 18.69 years
  - Class B felony – 6.48 years
  - Class C felony – 3.50 years

- Class D felony – 2.26 years
  - Class E felony – 1.35 years
- According to the DOC, the average operating cost per offender per day for calendar year 2020 is \$75.52.
- The proposed legislation will result in 17 offenders each serving 12.21 fewer years (18.69 - 6.48), or 4,459.70 (12.21 x 365.25) fewer days, than under current law.
- The proposed legislation will decrease recurring state incarceration expenditures by an estimated \$5,725,541 (\$75.52 x 4,459.70 days x 17 offenders).
- The proposed legislation will result in 68 offenders each serving 2.98 fewer years (6.48 - 3.50), or 1,088.45 (2.98 x 365.25) fewer days, than under current law.
- The proposed legislation will decrease recurring state incarceration expenditures by an estimated \$5,589,582 (\$75.52 x 1,088.45 days x 68 offenders).
- The proposed legislation will result in 155 offenders each serving 1.24 fewer years (3.50 - 2.26), or 452.91 (1.24 x 365.25) fewer days, than under current law.
- The proposed legislation will decrease recurring state incarceration expenditures by an estimated \$5,301,583 (\$75.52 x 452.91 x 155 offenders).
- The proposed legislation will result in 73 offenders each serving .91 fewer years (2.26 - 1.35), or 332.38 (.91 x 365.25) fewer days, than under current law.
- The proposed legislation will decrease recurring state incarceration expenditures by an estimated \$1,832,398 (\$75.52 x 332.38 days x 73 offenders).
- The total recurring decrease in state incarceration expenditures resulting from the proposed legislation is estimated to be \$18,449,104 (\$5,725,541 + \$5,589,582 + \$5,301,583 + \$1,832,398).
- Based on the Fiscal Review Committee's 2008 study and the Administrative Office of the Courts' 2012 study on collection of court costs, fees, and fines, collection in criminal cases is insignificant. The proposed legislation will not significantly impact state revenue.

#### *Enhancements*

- Pursuant to Tenn. Code Ann. § 39-17-432(g), the sentence of a defendant that commits both an offense occurring within a drug-free zone and a sale or delivery of a controlled substance in which the recipient or the intended recipient of is under 18 is authorized to be enhanced one time.
- The proposed legislation authorizes an enhancement for each violation as a result of a single act.
- Based on information provided by the DOC, there has been an average of two Class B felony admissions for violations of Tenn. Code Ann. § 39-17-417 sale or delivery to a minor each year over the last three years.
- The proposed legislation will result in the enhancement of one Class B felony to a Class A felony admission every five years.
- Population growth and recidivism will not impact these admissions.
- According to the DOC, the average operating cost per offender per day for calendar year 2020 is \$75.52.

- The average time served for a Class B felony is 6.48 years. The average time served for a Class A felony is 18.69 years. The draft legislation will result in each admission serving an additional 12.21 years ( $18.69 - 6.48$ ).
- Pursuant to Tenn. Code Ann. § 9-4-210, one offender will be admitted every five years serving an additional 4,459.70 days ( $12.21 \times 365.25$ ). The annualized increase in state incarceration expenditures is estimated to be \$67,359 ( $\$75.52 \times 4,459.70 / 5$ ).
- Based on information provided by the DOC, there has been an average of .67 Class C felony admissions for violations of Tenn. Code Ann. § 39-17-417 sale or delivery to a minor each year over the last three years.
- Due to the low number of Class C felony admissions, any impact to state incarceration resulting from the enhancement of such violations is estimated to be not significant.
- Based on information provided by the DOC, there has been an average of three Class E felony admissions for violations of Tenn. Code Ann. § 39-17-417 sale or delivery to a minor each year over the last three years.
- The proposed legislation will result in the enhancement of one Class E felony to a Class D felony admission every three years.
- Population growth and recidivism will not impact these admissions.
- The average time served for a Class E felony is 1.35 years. The average time served for a Class D felony is 2.26 years. The draft legislation will result in each admission serving an additional .91 years ( $2.26 - 1.35$ ).
- Pursuant to Tenn. Code Ann. § 9-4-210, one offender will be admitted every three years serving an additional 332.38 days ( $.91 \times 365.25$ ). The annualized increase in state incarceration expenditures is estimated to be \$8,367 ( $\$75.52 \times 332.38 / 3$ ).
- The recurring increase in state incarceration expenditures resulting from the proposed legislation is estimated to be \$75,726 ( $\$67,359 + \$8,367$ ).

#### *Total Incarceration Costs*

- The net impact of this legislation will result in a recurring decrease in state incarceration expenditures estimated to be \$18,373,378 ( $\$18,449,104 - \$75,726$ ).

*\*Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

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